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December 26, 2023
VIA ECF

The Honorable Jarrett B. Perlow
Circuit Executive and Clerk of Court
United States Court of Appeals for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

Re: *Apple Inc. v. United States International Trade Commission*, No. 24-1285

Dear Mr. Perlow:

We represent proposed intervenors Masimo Corporation and Cercacor Laboratories (collectively “Masimo”), who are the Complainants in the underlying ITC investigation that is the subject of Appeal No. 24-1485 filed by Apple Inc. Masimo will be filing an unopposed motion to intervene in this appeal today.

We write regarding (1) Apple’s Emergency Motion for an Immediate Interim Stay Pending Disposition of Motion For Stay Pending Appeal (“Interim Emergency Motion”), ECF-6; (2) Apple’s Emergency Motion to Stay Enforcement of ITC’s Orders Pending Review (“Regular Emergency Motion”), ECF-8; and (3) the December 26, 2023 letter from the International Trade Commission stating that that Commission opposes both of Apple’s motions, ECF-10. Masimo also opposes both motions.

This Court need not grant any emergency relief for multiple reasons including because there is no emergency. In its Interim Emergency Motion, Apple misleads the Court as to the status quo. Apple fails to inform the Court that it has *already stopped sales* of the infringing Apple Watches that are the subject of the challenged ITC orders. Apple stopped those sales before the ITC orders went into effect and before Apple filed both Emergency Motions. More specifically, on December 18, Apple announced that it was ceasing sales of the Apple Watches subject to the ITC’s remedial orders. Apple ceased online sales on December 21 and in-store sales on December 24. *See e.g.*, <https://www.cnn.com/2023/12/18/tech/apple-halt-sales-apple-watches/index.html>. The infringing Apple Watches are no longer available from Apple.

Apple’s Interim Emergency Motion suggests no briefing schedule. It appears that Apple seeks “an immediate administrative stay” while providing *no opportunity* for the Commission or Masimo to submit their oppositions. *See* Interim Emergency Motion at 2. In footnote 2, Apple admits that it rejected the Commission’s proposal for a January 5, 2024 response date, which is the date provided by the Federal Rules of Appellate Procedure 27(a)(3)(A). After rejecting the Commission’s proposal, Apple never proposed any alternative date for the Commission or Masimo to respond to the Interim Emergency Motion. Apple represents that it attempted to avoid “briefing these issues during the holiday season,” but that statement is misleading. Apple proposed extending the briefing schedule only on the Regular Emergency

Motion and only if the Commission and Masimo stipulated to an interim stay. That was unacceptable to both the Commission and Masimo.

If the Court does not expedite the briefing schedule on the Interim Emergency Motion, Masimo intends to oppose that Motion in a formal response currently due on January 5, 2024. Masimo agrees with the Commission's brief explanation in its December 26, 2023 letter why this Court should deny Apple's request for an interim stay, and Masimo intends to provide additional reasons in its response brief. In addition to the reasons already identified by the Commission, Masimo also wanted to inform the Court of the current status of the infringing Apple Watches, specifically, that Apple no longer offers those products for sale and voluntarily removed the products from the market several days before the ITC orders went into effect. Masimo submits that this fact alone shows why the Court need not order an expedited briefing schedule.

If the Court does expedite the briefing schedule, Masimo respectfully requests that the Court contact Masimo's counsel as soon as possible by phone to Joseph R. Re at (949) 721-2889 or by email at Masimo.AppleITC@knobbe.com.

Thank you for considering this submission.

Respectfully submitted,

/s/ Joseph R. Re

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cc: Counsel of record (via ECF)